

FILED

By WILLIAM B. GUTHRIE  
Clerk, U.S. District Court  
Deputy Clerk

Respondent.

**Case No. CIV 06-196-RAW-KEW**


Petitioner cites *Gibson v. Klinger*, 232 F.3d 799 (10th Cir. 2000), for the proposition that “equitable tolling of limitation period for filing federal habeas petition is appropriate when a prisoner is actually innocent . . . or when petitioner actively pursues judicial remedies

but files defective pleadings during the statutory period.” *Gibson* holds that “AEDPA’s one-year statute of limitations is subject to equitable tolling but only ‘in rare and exceptional circumstances.’” *Id.* at 808. Actual innocence would justify equitable tolling, *see id.*, but petitioner has made no showing of his actual innocence of the misconduct at issue. In addition, when a prisoner files a defective pleading while actively pursuing judicial remedies, equitable tolling also may be appropriate. *Id.* Here, the court finds petitioner has not demonstrated “rare and exceptional circumstances,” and his defective pleadings in the Court of Criminal Appeals are attributable to simple excusable neglect, which is not a basis for equitable tolling. *Id.*

Petitioner also claims *Wilson v. Jones*, 430 F.3d 1113 (10th Cir. 2005), supports relief for his claims, because he was exercising his right of access to the courts, when he was issued the misconduct in retaliation for his exposing the respondent’s unconstitutional practices. Petitioner’s analysis is wrong. *Wilson* concerned a wrongful misconduct related to an inmate’s attempt to pay for copies with funds from his mandatory savings account. *Id.* at 1115.

**ACCORDINGLY**, petitioner’s motion to alter or amend judgment [Docket #27] is **DENIED**.

**IT IS SO ORDERED** this 16<sup>th</sup> day of April 2009.

  
**RONALD A. WHITE**  
**UNITED STATES DISTRICT JUDGE**